IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 15978 of 2002

Between:

G. Shankaraiah, S/o late G. Mallaiah,
Ex-Conductor E.No. 175037,
R/o H. No. 1-71, Chandur-508 255, Nalgonda District

..... PETITIONER

AND

1 The Labour Court-III, rep. by its Presiding
Officer, Chandravihar building, 4th floor,
M.J. Road, Hyderabad-1
2 The Depot Manager,
APSRTC., Narketpally Depot,
Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records from the 1st respondent and issue an appropriate Writ, Order or Direction, particularly one in the nature of Writ of Certiorari and quash the Award passed by the 1st respondent in I.D. No. 222 of 1999 dated 2-4-2002, published on 20-6-2002, in upholding the order of removal passed by the 2nd respondent, as illegal, unjust, contrary to law and perverse; and grant the relief of reinstatement with wages and with all other consequential benefits.

Counsel for the Petitioner :MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.1: G.P. for Labour.

Counsel for the Respondent No.2: MR.V.T.M.PRASAD

The Court made the following :

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

WRIT PETITION NO.15978 OF 2002

ORDER:

Heard Sri A.K.Jaya Prakash Rao, the learned counsel appearing for the petitioner and Sri V.T.M.Prasad, the learned Standing Counsel appearing for the second respondent.

The petitioner, who has been working as Conductor with the second respondent-corporation, filed this Writ Petition, *inter alia*, seeking to assail the award passed by the first respondent herein in I.D. No. 222 of 1999 dated 02.04.2002 as published on 20.06.2002, rejecting claim of the petitioner for setting aside orders of his removal.

The brief facts which are not in dispute are that the petitioner while conducting a bus on 11.01.1999 on Narketpalli-Chandur via. Chintapalle route, a surprise check was exercised by the officials of second respondent and having found certain irregularities, a charge memo was issued followed by a charge sheet, and after conducting disciplinary enquiry, his services were removed by the orders dated 26.10.1999. After exhausting remedies available under the Regulations, the petitioner invoked provisions of Section 2A(2) of the Industrial Disputes Act, 1947, whereupon the first respondent took up enquiry, during which it was held that the domestic enquiry conducted was invalid and therefore, both the parties were allowed to produce evidence. Accordingly, the petitioner was examined as WW1 and on behalf of the second respondent-Corporation, MW1 was

examined and Exs.M1 to M13 were marked. On consideration of the entire evidence and material on record, the impugned award was passed holding that the petitioner was responsible for the charges 1 to 5 framed against him, though he had been acquitted of charge no.6, and rejected his claim for reinstatement or other benefits.

Sri A.K. Jayaprakash Rao, learned counsel appearing on behalf of the petitioner submits that having regard to the nature of allegations and especially in regard to the ticket irregularities, there was no proper check on the part of the checking officials to verify with the cash box, without which the petitioner can not be mulcted with liability.

The learned standing counsel appearing on behalf of the second respondent sought to sustain the findings, *inter alia*, on the ground that it was only after considering the evidence of MW1 vis-à-vis other documents filed in support, the Labour Court came to the conclusion rightly and therefore, it calls for no interference.

Considering the submissions made on either side and on perusal of the material, the question which falls for consideration is as to whether on the facts and circumstances, the petitioner is entitled for reinstatement with other benefits ?

There is no dispute to the fact that the petitioner had been working as a Conductor and during a check conducted on 11.1.1999, certain irregularities were found by the checking officials whereupon six charges were framed and this was followed by disciplinary enquiry and ultimately orders of termination were passed on 26.10.1999. Since the same was referred as a dispute before the first respondent, both sides were allowed to lead evidence. Except examining MW1, the Inspector who conducted inspection, no other independent

evidence was produced on behalf of the second respondent herein. Even the driver, who alleged to have recorded the evidence and counter-signed papers, was not examined. No explanation is forthcoming as to why the said driver, who could have been the best witness, has been withheld by the second respondent. Further, it is to be seen that the plea raised by the petitioner all along to the effect that in respect of the alleged two passengers who were given already sold tickets, is totally incorrect and no such passengers exist. In spite of the same, no attempt has been made to show or prove as to the existence of such passengers in the bus, more so, in the absence of proper check with the cash with the petitioner, no blame as such can be pointed. No doubt, all these aspects could have been properly taken into consideration during the course of domestic enquiry or at least before the first respondent in a proper perspective instead of simply placing reliance on the evidence of MW1. Be that as it may, the fact remains that documentary evidence as produced on behalf of the respondent substantiates the allegations to some extent. In view of the same, it can not be said that the findings as arrived at by the first respondent are illegal or perverse, nor can be interdicted in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

However, taking into consideration the totality of the circumstances and especially in the absence of any conclusive and cogent material being produced on behalf of the second respondent herein to support the very allegations as made in the charges, de hors the other documentary evidence produced, it is a fit case where the petitioner's case can be reconsidered for appointment.

In the circumstances, the Writ Petition is partly allowed modifying the impugned award to the effect that the second respondent shall consider the petitioner's case for fresh appointment and pass orders accordingly within a period of two months from the date of receipt of copy of this Order. It is needless to mention that the entire past period shall be treated as if the petitioner on duty, for the purpose of pension after attaining age of superannuation. No costs.

(B.Prakash Rao, J.)

16.03.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on Wednesday the sixteenth day of March two thousand and five.

… Registrar

Copy to:

1 The Labour Court-III, rep. by its Presiding Officer, Chandravihar building, 4th floor, M.J. Road, Hyderabad-1
2 The Depot Manager, APSRTC., Narketpally Depot, Nalgonda District.

3 Two CCs to the G.P. for Labour, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

4 Two CD copies.